UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION THIRTEEN

UFC CARRIERS, LLC

Employer
and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 705
Case 13-RC-21841
Petitioner

and

NATIONAL ALLIED WORKERS UNION LOCAL 831

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held May 27, 2009 before a hearing officer of the Na-tional Labor Relations Board, to determine whether it is appropriate to conduct an election on the petition filed by the Petitioner. [1]

I. ISSUES

The Petition, as amended at the hearing, seeks an election in a unit of the Employer's employees defined in a collective bargaining between the Intervenor and the predecessor em-ployer, DDS Personnel, LLC which was "assigned" by DDS Personnel, LLC to the present Em-ployer. This unit description encompasses the employee classifications of drivers, dock workers, mechanics, and trailer repairmen. The Employer and the Intervenor contend that the petition for an election is blocked by a new collective bargaining agreement negotiated between the Em-ployer and the Intervenor on April 27, 2009, prior to the filing of the instant petition on May 13, 2009. This new agreement is effective by its terms from August 1, 2009 through July 31, 2012. The Employer and the Intervenor also contend that the unit sought by the Petitioner is inappro-priate as the Employer does not employ any mechanics or trailer repairmen. The Petitioner, con-ceding that this Employer does not employ any mechanics or trailer repairmen, nevertheless as-serts the unit should be described by its historically included classifications.

1 Upon the entire record in this proceeding, the undersigned finds:
a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
c. The labor organizations involved claim to represent certain employees of the Employers.
d. A question affecting commerce exists concerning the representation of certain employees of the Employers within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

2 All dates are 2009 unless otherwise noted.

[3] At the hearing, the Petitioner took the position that the unit should include all the classifications described in the current collective bargaining agreement adopted by the Employer, which would include trailer repairmen as well as the mechanics. However, in its brief the Petitioner, while asserting the unit description to include all the classifica-tions in the current agreement, only mentioned the mechanics, and its proposed unit description only included the mechanic classification and not the trailer repairmen.

[4] The record shows that mechanics and trailer repairmen were not encompassed by any of the terms that the Employer and Intervenor agreed upon as modifications to the language of the adopted current agreement.

II. DECISION

For the reasons discussed in detail below, I find that the agreement between the Employer and the Intervenor effective from August 1, 2009 to July 31, 2012 does not bar the instant peti-tion. I further find that the appropriate unit should not include the mechanic and trailer repair-men classifications as the record shows the Employer does not employ any employees in these classifications. Accordingly, IT IS HEREBY ORDERED that an election be conducted under the direction of the undersigned in the following appropriate unit:

> All Dock Workers, Dock Workers-Bellwood, 10 year Dock Work-ers, Dock Foremen, Spotters, Drivers-Straight Truck, and Drivers-Tandem Trucks employed by the Employer at its 1001 South Laramie Street, Chicago, Illinois and Bellwood, Illinois locations; but excluding office clerical employees, sales personnel, profes-sional employees, supervisors, steady house drivers, and guards as defined in the Act.

III. STATEMENT OF FACTS

On March 2, 2009,[2] DDS Personnel assigned its drivers and dock workers together with a collective bargaining agreement covering those employees to the Employer. The record does not show the reason for the assignment or relationship, if any, between DDS and the Employer other than they negotiated for several months concerning the assignment of part of DDS's business to the Employer, and no one raised any issues on these matters. The record shows that the Em-ployer adopted the assigned collective bargaining agreement, which is effective from August 1, 2006 through July 31, 2009. This agreement also covered mechanics and trailer repairmen, which were not assigned to the Employer, but were retained by DDS. On April 17, Intervenor expressed its intent to disclaim interest in representing the mechanics and trailer repairmen em-ployed by DDS effective May 1. On May 1, the mechanics and trailer repairmen were trans-ferred to another employer, Inner Motil Maintenance Group (IMMG). Again the record does not show any of the circumstances surrounding the disclaimer of representation by the Intervenor or the transfer of the mechanics and trailer repairmen by DDS.

On April 27, the Employer and Intervenor conducted negotiations for a successor collec-tive bargaining agreement, reaching agreement on terms for a successor agreement. On May 2, Intervenor submitted to the agreement to its membership for a ratification vote. Once ratified, the agreement was set to take effect on August 1 and run through July 31, 2012. In its letter notify-ing its membership of the ratification vote, Intervenor referenced the agreement as a modification to its 2006-2009 collective bargaining agreement. Petitioner filed the instant petition on May 13. The ratification ballots were counted on May 16 and on May 18 the Intervenor notified the Em-ployer that its membership had ratified the agreement. At the time of the hearing, no formal agreement encompassing the terms reached between the Employer and Intervenor had been drafted and no document encompassing the agreed upon terms had been signed by the Employer.

IV. ANALYSIS:

A. Contract Bar

A collective bargaining agreement between an employer and a labor organization that meets certain long-standing Board requirements may bar the processing of a representation peti-tion for up to three years, with the exception of an open period for the filing of a petition 90 to 60 days prior to the expiration of the contract. To constitute a bar, the agreement must be written, although it does not have to be a formal document; it must be signed by the parties to the agree-ment; it must contain terms sufficient to stabilize a collective bargaining relationship; and it must compass an appropriate unit and the employees sought in the representation petition. *Appala-chian Shale Products Co.,* 121 NLRB 1160 (1958). The burden of showing that a purported agreement constitutes a bar to the processing of a representation petition is on the party asserting the agreement as a bar. *Roosevelt Memorial Park,* 187 NLRB 517 (1970).

The Employer and the Intervenor have not met their burden of showing that their agree-ment effective from August 1, 2009 and through July 31, 2012 meets the Board's requirements to be a bar to the instant petition. First, there is no showing on the record that there is a written agreement on the terms reached between the Employer and the Intervenor which is signed by them either in one document or in separate documents, such as an exchange of signed proposals. *Georgia Purchasing,* 230 NLRB 1174 (1977). At best, the record shows the agreement of the Employer and the Intervenor for the terms of a new collective bargaining agreement and the rati-fication of those terms by the employees. However, there is no indication that both parties signed off on the agreed upon terms in any form, and the Employer's representative and negotia-tor stated on the record that he had not signed off on the agreement at the time of the hearing. Notwithstanding the belief of the parties that they have a contract, such will not bar a representa-tion petition unless a document of some type is signed by all the parties. *Appalachian Shale,* su-pra.; *Waste Management of Maryland,* 338 NLRB 1002 (2003). Accordingly, for this reason the new agreement between the Employer and the Intervenor can not be a bar to the instant petition.

Second, even if the Employer and Intervenor had signed their new agreement, a properly executed agreement can not bar a representation petition if by its terms it is not effective prior to the filing of the representation petition. *National Broadcasting Co.,* 104 NLRB 587, 588 (1953); *Deluxe Metal Furniture Co.,* 121 NLRB 995, fn. 6 (1958). In the instant case, the peti-tion was filed on May 13 and the new contract asserted to be a bar is not effective until August 1. Accordingly, for this reason the parties' agreement also can not serve as a bar to this petition.

In view of the foregoing, I do not need to resolve the Petitioner's contention that the new agreement is a premature extension of the agreement adopted by the Employer that would de-prive them of the open period to file the instant petition.

B. The Unit Description

The Petitioner would include mechanics and trailer repairmen in the unit notwithstanding that it acknowledges that the Employer does not employ any mechanics and trailer repairmen.[3] The basis for the Petitioner's contention is that mechanics and trailer repairmen were included in the unit with the predecessor employer, DDS; the Employer and Intervenor failed to remove them from the new agreement effective August 1;[4] and the Employer might hire mechanics or trailer repairmen in the future. The record is clear that the Employer did not obtain any mechan-ics or trailer repairmen from DDS, it has not hired any mechanics or trailer repairmen, and there are no immediate plans to do so. The Board looks to the actual, existing composition of units and the employees actually working for the employer to determine the inclusions or exclusions from the unit's composition. The Board does not determine unit placement issues in the abstract, such as when there are no employees in the classification in dispute between parties. *Coca-Cola Bottling Co. of Wisconsin,* 310 NLRB 844 (l993). Accordingly, I find it is inappropriate to in-clude mechanics or trail repairmen in the unit description.

In its brief, the Petitioner also proposes to describe the appropriate unit as being limited to the Employer's employees "leased or otherwise placed in service to Grane Transportation & Logistics within 25 miles of its" Laramie location. There is no record evidence as to where the Employer leases or places the petitioned-for employees or that there is any basis for a 25 mile limitation as to where the employees are leased or placed. Thus, I find it is inappropriate to add this proposed description to the unit found appropriate. Rather, I have described the unit based on the record evidence showing that the classifications sought by the Petitioner and employed by the Employer in a unit presently represented by the Intervenor are currently employed in two lo-cations, one on Laramie Avenue in Chicago and the other in Bellwood, Illinois.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(*s*) found appropriate at the time and place set forth in the notice of election to be is-sued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(*s*) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, em-ployees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be rep-resented for collective bargaining purposes by the **NATIONAL ALLIED WORKERS UNION LOCAL 831; INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL 705; or by NO LABOR ORGANIZATION.**

VI. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election no-tices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for set-ting aside the election whenever proper objections are filed.

VII. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Under-wear, Inc.,* 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 3 copies of an eligibility list containing the full names and ad-dresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 13's Office, 209 South LaSalle Street, Suite 900, Chicago, Illinois 60604 on or before **JUNE 18, 2009**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street. N.W., Washington, DC 20570. This request must be received by the Board in Washington by **JUNE 25, 2009**.

In the Regional Office's initial correspondence, the parties were advised that the National La-bor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlrb.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

DATED at Chicago, Illinois this 11th day of June, 2009.

/s/ Joseph A. Barker

Joseph Barker
Regional Director
National Labor Relations Board
Region Thirteen
209 South LaSalle Street, Suite 900
Chicago, Illinois 60604

CATS: Bars to Election – Contract
347-4010-2001-5000; 347-4040-1740; 460-5067-0701